

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Crl.Rev.Pet.No. 38 of 1998()

CRA.117/1997 of III ADDL.SESIONS COURT, ERNAKULAM
CC 90/92 OF ADDL. CHIEF JUDL. MAGISTRATE COURT, ERNAKULAM

REVN. PETITIONER: APPELLANT/ACCUSED

KODAKKADAN CHERIYA MUHAMMED
S/O.KUNHABDULLA HAJI
KUNNATH HOUSE, P.O.PUKKOTTUR
MALAPPURAM DISTRICT.

BY ADV. SRI.P.K.ABOOBACKER(EDATHALA)
SRI.P.CHANDRASEKHAR

RESPONDENTS: RESPONDENTS/COMPLAINANTS

1. THE ASSISTANT COLLECTOR
SPECIAL CUSTOMS, PREVENTIVE DIVISION
KOZHIKODE.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY ADV. SRI.P.PARAMESWARAN NAIR, ASST.SOLICITER
BY PUBLIC PROSECUTOR SRLAMJAD ALI
SRI.B.N.SHIVSANKAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.38 of 1998

Dated this the 24th day of July, 2007

O R D E R

The revision petitioner is the accused who was found guilty of the offence under Section 135(1)(i) of Customs Act, 1962 and sentenced to undergo R.I. for two years and to pay fine of Rs.30,000/- and in default, to undergo simple imprisonment for six months.

2. The prosecution case is that on 28.8.1990 the officers of the Directorate of the Revenue Intelligence and Special Customs Preventive Division, Kozhikode intercepted the accused outside the arrival hall of the Karipur Airport when he landed from Jeddah via Bombay by air. On search of his air bag and card board box, 14 gold biscuits of 116.500 gms each kept concealed inside the battery pack of an emergency lamp found in the card board box and he was carrying no valid document with respect to the same. The market value of the same amounted to Rs.5,65,957/-. The statement recorded under Section 108 of the Customs Act revealed that the contraband was entrusted with him

on 26.8.1990 by one Shafeeque at Jeddah and that he was offered a sum of Rs.20,000/- and that on his arrival at Bombay he contacted Aero Wings Travel Service and obtained air ticket in the name of Palakkal Kunhi Mohammed. He was arrested and produced before the court on the next day. The gold was tested at the Cochin Custom House Laboratory and it was found that 13 gold biscuits had purity of 99.89% and the remaining one 99.87%. The gold was confiscated and the penalty of Rs.56,000/- was imposed by the Collector of Central Excise and Customs, Kochi.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 6 and Exts. P1 to P10.

4. The version set up in during the cross examination as well as when questioned under Section 313 CrI.P.C. is that he was waiting at KSRTC bus stand, Kozhikode to go to his native place and when he was taken into custody by the Customs officers, he was assaulted and forced to admit the offence. He had retracted his statement on 30.5.1991. It is also submitted that he was detained under COFEPOSA Act for 13 months.

5. The prosecution evidence consisted the testimony of

PWs' 2 and 3, the officials attached to the Customs SCP unit, Calicut and that PW6, the independent witness to the seizure. Of course, PW6 has not supported the prosecution in full and was treated as hostile. The documents seized from the accused included his passport and two air tickets and two boarding passes. It is noted by the court below that he arrived at Bombay from Jeddah on 27.8.1990 and has reached Calicut on the next day itself which indicated that he travelled by air. The boarding passes and the tickets seized from him evidenced the facts that he travelled as alleged. There is no explanation as to how he happened to be in possession of the air ticket from Bombay to Karipur in the name of Palakkal Kunhi Mohammed. The circumstances indicated that the accused travelled from Jeddah as alleged. The evidence of PWs' 2 and 3 the customs and officials stands not impeached. On a perusal of evidence of PWs' 2 and 3 it is seen that no contradiction has been brought out. There is no rule that official witnesses should not be relied.

6. The contention of the counsel for the revision petitioner is that Ext. P1 statement cannot be treated as a

voluntary statement and that the same was extracted subsequent to his arrest. It is noted that he retracted the statement only after 8 months although he was released on bail on 15.9.1990 itself. I find that even without relying on Ext. P1 the prosecution evidence is so formidable that the conviction can be entered on the basis of the rest of the evidence adduced. I find that the order of the court below is fully supported by proper reasons and evidence. The conviction is only to be confirmed.

7. As the value of the seizure gold cost Rs.1 lakh under Section 135(1) is attracted. The counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place in the year 1990 and so far the accused has been facing the proceedings and living under the shadow of the impending imprisonment. It is also to be noted that the gold control provisions has been much liberalised subsequently. He was in judicial custody for a considerable period also.

8. It is submitted that the accused/revision petitioner has already undergone period of imprisonment. In the circumstances, the sentence is modified to rigorous imprisonment for two years,

i.e., the period of imprisonment if he has already undergone the same and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for two months.

The criminal revision petition is disposed of accordingly.

**K.R.UDAYABHANU,
JUDGE**

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